

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII Rule 32(2) (b))

Description of Case.

Criminal Jail Appeal No.166 of 2005

(Old No. 863/1991)

Date of decision :- 24.07.2007

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date :- 24.07.2007

Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Jail Appeal No. 166 of 2005

(Old No. 863 of 1991)

Ashok Kumar

S/o Late Sri Sohan Lal

R/o 218-A, Frontier Colony,

Adarsh Nagar Jaipur, Jaipur

...Appellant

Versus

State

... Respondent

Mr. Chandra Mauli Shah, Amicus Curiae for the appellant

Mr. G.S. Sandhu, learned Government Advocate for the respondent-State.

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J. C. S. Rawat, J.**

Per Hon'ble J.C.S. Rawat, J.

1. This appeal had been directed against the judgment and order dated 05.06.1987, passed by Sri S.K. Bhatt, then Additional Sessions Judge, Saharanpur in Sessions Trial No. 486 of 1986, whereby the appellant has been convicted u/s 302/309 Indian Penal Code, 1860 (hereinafter as I.P.C.) and sentenced to undergo imprisonment for life u/s 302 I.P.C. & one year simple imprisonment u/s 309 I.P.C.

2. Brief facts emerging from the record are that the father of Rashmi Dua PW1, Poonam PW2 and deceased Seema was a lecturer in D.A.V. Inter College, Roorkee and their mother was also Principal in Kaniya Pathshala, Roorkee. Their parents used to go to school daily at 7:30 a.m. and come back at about 12:30 p.m. from their schools. On 23.08.1986 at about 9:30 a.m., the parents of Rashmi Dua PW1, Poonam PW2 and deceased Seema were not in their house and had gone to the school. Rashmi Dua PW1 was in her bedroom and her maternal uncle accused/appellant was sitting on the chair. The deceased Seema was lying on the bed. Km.

Poonam PW2 was studying in the varanda outside the bedroom. Km. Rashmi Dua PW1 had stated that the deceased Seema and the accused/appellant were talking to each other and she could not hear the conversation in between them. The deceased Seema was aged about 20 years and she had completed her M.Sc. (physics). Km. Rashmi Dua PW1 had stated to the accused/appellant that her father was in search of suitable match for the deceased Seema and she would be married as soon as he would get the suitable match. Thereafter, Rashmi Dua PW1 came out of the room and joined her sister Poonam PW2 in the varanda. When both the sisters Rashmi Dua PW1 and Poonam PW2 were in the varands, they heard the cry of their sister Seema from the bedroom. They went towards the room and found that room was bolted from inside and their sister Seema was crying for help and she wanted to come outside the room. The sound of the accused/appellant Ashok Kumar was also coming from the room and he was saying that he would kill the deceased Seema and thereafter, he would also commit suicide. Both the sisters were thumping the doors but they could not get success in opening the doors. In the meantime, cousin of the Rashmi Dua PW1 and Poonam PW2 namely, Rajendra Prasad also came there to give the '*Prasad*' of Vashno Devi. When he saw the entire incident, he immediately rush to the college to call their father. The accused/appellant Ashok Kumar is the maternal uncle of the deceased Seema, Rashmi Dau PW1 & Poonam PW2 and brother-in-law of Om Prakash Dua PW5 father of the deceased Seema. Rajendra Prasad narrated the entire story what he had seen to the father of the deceased Seema. The father of the deceased and Rajendra Prasad immediately rushed to the house and found that the deceased Seema was

lying in the room and she was already dead. Om Prakash Dua PW5, further saw that the accused/appellant was in a room adjacent to the room where the dead body of the deceased Seema was lying and he had bolted the door of the room from inside. He had a knife and he had also sustained the injuries on his person. Om Prakash Dua PW5 enquired about the incident from his brother-in-law accused/appellant Ashok Kumar. The accused/appellant stated to him that he and the deceased Seema had a fight in which both of them had sustained the injuries. On this information father of the deceased Om Prakash Dua PW5 lodged the report to the police station and the police reached at the spot immediately after receiving the information. The investigation officer got opened the room and took the accused/appellant in his custody. The accused/appellant was found in possession of the knife and it was recovered from him by the Investigating Officer. The Investigating Officer prepared the recovery memo Ex.Ka.8. He was admitted in the Government Hospital Roorkee where his injuries were examined by Dr. Surendra Kumar PW4. Thereafter, confessional statement/dying declaration Ex.Ka.1 of the appellant was recorded by the Tehsildar Roorkee. The Investigating Officer prepared the inquest report Ex.Ka7 and took into possession the blood drenched bed sheet and prepared its recovery memo Ex.Ka.16. He also recorded the statement of the witnesses and prepared the site plan Ex.Ka.17. After completing the necessary formalities of the investigation, he submitted the chargesheet Ex.Ka.20 before the court.

3. After submission of chargesheet, the accused-appellant was committed to the court of Sessions for trial and the trial

court framed charges u/s 302 and 309 I.P.C. against the accused-appellant. The appellant-accused denied the charges levelled against him and claimed his trial.

4. The prosecution in support of its case examined as many as seven witnesses. Km. Rashmi Dua PW1 is the younger daughter of the informant and younger sister of the deceased Seema. Km. Poonam PW2 is also the sister of Km. Rashmi Dua PW1 and the deceased Km. Seema. At the time of occurrence Poonam PW2 was studying in her verandah. Ranjeet Singh PW3 is the Tehsildar and he had recorded the confessional statement of the accused/appellant Ashok Kumar. Dr. Surender Singh PW4 is the medical officer who examined the accused Ashok Kumar. Om Prakash Dua PW5 is the father of the deceased Km. Seema and real brother-in-law of the accused. He is not an eyewitness of the incident. He wrote the F.I.R. and submitted the same to the police station. Uday Vir Singh PW6 is the witness of inquest report. Inspector Nathi Lal Sharma PW7 is the investigating officer of the case.

5. The accused-appellant was examined u/s 313 Cr.P.C. and he has pleaded not guilty to the offence. He has stated that he has been falsely implicated in this case.

6. The learned Sessions Judge on appreciation of the evidence held the accused-appellant guilty and convicted and sentenced him as mentioned above.

7. We have heard learned counsel for the parties and perused the record.

8. At the outset, it needs to be mentioned here that it is not disputed that the deceased Seema sustained the injuries on her person on 23.08.1986 at about 10:00 a.m. in a room of her house. It is further pertinent to mention here that the accused/appellant Ashok Kumar has admitted the genuineness of the post mortem Ex.K.5 of the deceased Km. Seema. According to the post mortem report EX.Ka.-5 the following ante mortem injuries were found on the person of the deceased Km. Seema:-

1. Incised wound 1.5 cm. X 0.5 cm. X subcutaneous line deep in (L) mandibular region. Obliquely transverse in direction tailing outward and left. Blood present.

2. Incised wound 1 cm. X 0.25 cm. X muscle deep on (L) side neck 6 cm. Below (L) ear in transverse direction. Blood present in wound tailing outward to left.

3. Incised wound 1.5 cm. X 0.5 cm. X muscle deep on top of (L) shoulder in vertical tailing to downward blood present.

4. Incised wound 3 cm. X 1.5 cm. X bone deep on the dorsum of (L) hand space between (L) thumb and (L) index. Direction vertical tailing outward and upward, dried blood present.

5. Incised wound 1 cm. X 0.25 cm. X bone deep on the dorsum of (R) little finger. Direction oblique. Dried blood present, tailing outward.

6. Incised wound 2 cm. X 0.5 cm. X abdominal cavity deep on (L) side hock in lumbar region vertical direction tailing downward 5 cm. Lateral to mid-line hock (Left Kidney damage due to this injury).

7. Incised wound 3 cm. X 1 cm. X abdominal cavity deep (L) side abdomen vertical direction tailing upward. 12 cm. from umbilicus at 3 O clock position. Dried blood present.

8. Incised wound 2 cm. x 0.7 cm. X abdominal cavity deep in (L) side abdomen 8 cm. from umbilicus at

2 O clock position (This injury had damaged stomach and spleen) direction oblique.

9. Incised wound 2 cm. X 1 cm. X abdominal cavity on (L) side abdomen at 1 O clock position, 10 cm. from umbilicus, vertically oblique tailing outward and downward, blood present.

10. Incised wound 2 cm. X 0.5 cm. X abdominal cavity deep transverse direction 5 cm. from umbilicus at 12 o clock position tailing to left. Blood present.

11. Incise wound 2 sc. X 1 cm. X abdominal cavity deep on right side abdomen at 11 O clock position 7 cm. from umbilicus (obliqued downward).

12. Incised wound 3 cm. X 1 cm. X cavity deep on (R) side abdomen in vertical direction, 8 cm. from umbilicus at 9 O clock position tailing downward. Blood present.

The doctor has further opined in the post mortem report that the death occurrence due to the shock and hemorrhage as a result of ante mortem injuries found on the person of the deceased. The accused-appellant has also stated in his statement recorded u/s 313 that the deceased Km. Seema was his real niece. On the date, time and place of the occurrence, the accused/appellant and the deceased Km. Seema were alone in the house of the informant Om Prakash Dua PW5. The deceased Km. Seema told the accused/appellant that her father wanted to marry her with some boy to which she did not like and her father does not wanted to marry her with the boy of her liking. Due to this, the deceased Km. Seema wanted to commit suicide and she was very furious at the time. She started causing injuries on her person by inflicting knife blows. The accused/appellant wanted to prevent her to commit suicide and to inflict the injuries on her body but he could not save her inspite of his best efforts to prevent her from committing the suicide and causing injuries by knife. He has further stated that he also sustained the knife injuries when he was preventing her from

causing the knife injuries on her person. The prosecution witnesses have also stated that they heard the cry of the deceased from inside the room and they found that the accused/appellant and the deceased Km. Seema were inside the room and the room was found bolted and the deceased Seema was crying for the help. Thus it is amply established that the deceased Km. Seema sustained the fatal injuries resulting her death on 23.08.1986 at about 10:00 a.m. at the place of occurrence.

9. Now we have to consider who is responsible for the injuries caused on the person of the deceased Km. Seema. The case rests on the direct evidence. It is not disputed that the deceased Km. Seema died at the spot on the date of the occurrence. It is also not disputed that she died due to the knife blows sustained by her on her person. The accused-appellant has also stated in his statement recorded u/s 313 that the deceased Km. Seema was his real niece. It is not disputed that the accused/appellant and deceased Seema were present in the room of the house where the deceased Seema sustained the knife injuries resulting her death. According to the accused/appellant the deceased Seema wanted to commit suicide and she immediately started causing injuries on her person by knife. The accused/appellant also sustained the knife injuries when he was preventing her from causing the knife injuries on her person.

10. The prosecution had led the evidence of Rashmi Dua PW1 and Poonam PW2 who are the daughters of the informant Om Prakash Dua PW5. Both the witnesses Rashmi Dua PW1 and Poonam PW2 are the real sisters of the

deceased Seema. Both the witness and the deceased Km. Seema were real neice of the accused/appellant. They have stated that their father was lecturer in D.A.V. Inter College, Roorkee and their mother was Principal in Kaniya Pathshala, Roorkee. Both the witnesses have further stated that their parents used to go to school in the morning at 7:30 a.m. and used to come back at about 12:30 in the afternoon. It was further stated by them in their evidence that when the incident took place their parents were not present in the house. On 23.08.1986 at about 9:30 a.m. Rashmi Dua PW1 was in her bedroom and her maternal uncle accused/appellant was sitting on the chair. Km. Poonam PW2 was studying in the varanda outside the room. Km. Rashmi Dua PW1 has stated that the deceased Km. Seema and the accused/appellant were talking with each other and she could not hear the conversation in between them. Km. Rashmi Dua PW.1 had stated to the accused/appellant that her father was in search of suitable match for the deceased Km. Seema and she would be married as soon as she would get the suitable match. Thereafter, Km. Rashmi Dua PW1 came out of the room and joined her sister Km. Poonam PW2 in the varanda. When both the witnesses were in the varanda, they heard the cry of their sister Seema. They went towards the room and found that the room was bolted from inside and their sister Seema was crying for help and she wanted to come outside the room. The sound of the accused/appellant was also coming from the room and he was saying that he would kill the deceased Seema and after killing her, he would also commit suicide by killing himself. Both the sisters were thumping the doors but they could not get success in opening the doors. In meantime, cousin of the witnesses namely, Rajendra Prasad reached in the house. He went there only to

give the "*Prasad*" of Vashno Devi to the family members of the informant. Both the witnesses were badly knocking the doors to open it and both of the witnesses were crying not to kill the deceased Km. Seema and open the door. The accused/appellant did not accede to the request of both the witnesses. Seeing so, Rajendra Prasad immediately rushed to the college to call the father of the deceased. When the witnesses were trying to open the door the other persons also reached at the spot and due to the pressure of thumping, the door's bolt inside the room was broken. Immediately thereafter, the accused/appellant entered into another adjacent room. The accused/appellant again bolted himself inside that room. They found that her sister deceased Seema lying on the floor and she had sustained the number of injuries on her body. Blood was oozing from the injuries and the witnesses found her dead at the time. The parents of the deceased reached at the spot and they peeped inside the room through window where the accused/appellant got himself bolted from inside. The father of the deceased Km. Seema asked him the reason of injuries which her daughter the deceased Seema sustained at the spot. He told Om Prakash Dua PW5 that a quarrel took place in between them in which both of them have sustained the injuries. Immediately, Thereafter the report was lodged by Om Prakash Dua PW5. The police reached at the spot and got the room opened and apprehended the accused/appellant alongwith knife. During the period when the accused/appellant was inside the room, he also inflicted injuries to himself.

11. The prosecution has also led the evidence of Om Prakash Dua PW5 who is the father of the deceased Seema,

Rashmi Dua PW1 and Poonam PW2. He has stated that he is real brother-in-law of the accused/appellant. He has stated in his evidence that his daughters used to treat the accused/appellant as their real brother and he also treated him as his son. The deceased Seema was aged about 20 years at the time of her death and she had completed her M.S. (physics). He has further stated that he was called from the school by Rajendra Prasad where he was employed. When he reached in his home, he found his daughter dead and lying on the ground. He immediately lodged the report with the police. The police accompanied him and reached at the spot. The police also found that the accused/appellant was inside the room and he had bolted the door inside the room. He had also inflicted injuries to himself to commit the suicide. He had further deposed that the police got opened the room and the accused/appellant was taken into custody with a knife. He has further stated that he had talked about the marriage of his daughter 2-3 days' before in presence of the accused/appellant. Since he had no son, therefore, he always treated the accused/appellant as his son and he never had any suspicion about the accused/appellants illicit relation with his daughter.

12. Learned Amicus Curiae contented that the name of Rashmi Dua PW1 and Poonam PW2 have not been mentioned in the F.I.R., as such, no reliance can be placed on their testimony. It was further contended that Rashmi Dua PW1 and Poonam PW2 are got-up witnesses only to implicate the accused/appellant and their presence at the spot is highly doubtful. Learned G.A. refuted the contention. It is well settled position of law that the FIR is not the encyclopedia in which all the details should be mentioned. If the genesis of

the incident has been mentioned in the FIR, it is sufficient. The FIR is lodged only to give the motion to the investigation. It is not reasonably expected that the scared witness especially father of the deceased would be able to give meticulous and the precise account of details of incident that landed on the deceased. The informant has only narrated the summary of the incident. It does not require that the names of the witnesses who were present at the scene of the occurrence must be indicated in the F.I.R. It is also pertinent to mention here that the statement of the witnesses Rashmi Dua PW1, Poonam PW2 and Om Prakash Dua PW5 made u/s 161 Cr.P.C. were recorded on 23.08.1986 immediately after the incident by Investigation Officer Nathi Lal Sharma PW7. Thus the prosecution evidence reveals that the statement of Rashmi Dua PW1, Poonam PW2 and Om Prakash Dua PW5 were recorded within few hours of the incident. The Hon'ble Apex Court in the Case on **Anil Rai Vs State of Bihar** reported in **2001 SCC (Cri) p.1009** has held at para 25 as under:-

"25. I also do not find any substance in the submission that because the names of PWs 1 and 5 are not mentioned in the FIR, no reliance can be placed on their testimony. The purposes of the FIR is to set the criminal law in motion which does not require the details or the names of all the witnesses who have seen the occurrence. It is not necessary that elaboration of every fact that had happened should be given by the person who lodges the first information report. It has to be kept in mind that PW 6 whose husband had been killed must have been extremely perturbed at the time of lodging of the FIR and in that state of mental agony she might not have been able to give details relating to the names of the witnesses who had seen the occurrence. The presence of all the eyewitnesses has been accepted by the courts below and I do not see any reason to take a different view, particularly this being a question of fact which was fully noticed by the two courts on fact and in

spite of that the courts had believed the testimony of PWs 1 and 5. It is not the case of the appellant that the names of the accused persons were not mentioned in the FIR. It is also not the case of the appellant that the statements made under Section 161 CrPC of the aforesaid witnesses were not immediately recorded by the investigating agency. The plea raised is far-fetched and without any substance.”

Thus, we do not find any substance in the argument raised by the learned Amicus Curiae.

13. It was further contended by the learned Amicus Curiae that the F.I.R. did not contain the fact that the accused/appellant had given the fatal blows upon the person of the deceased and therein he committed the offence of murder of the deceased. Learned G.A. refuted the contention and contended that the F.I.R. was lodged on the basis of the version narrated by the accused/appellant to the father of the deceased. Since the accused/appellant was the real maternal uncle of the deceased Seema and he could not prima facie dis-believed the version given by him to the father of the deceased Seema. After going through the submission of the parties and perusal of the record, it is evident from the record that the deceased Seema was niece of the accused/appellant. The informant Om Prakash Dua PW5 was not present at the scene of the occurrence. Whatever fact the informant Om Prakash Dua PW5 has gathered from the accused/appellant, he lodged in the first information report immediately after the incident. The prosecution has also adduced the evidence that the deceased Seema was lying on the bed and the accused/appellant was sitting on the chair in one room. Both the sisters, i.e., Rashmi Dua PW1 and Poonam PW2 of the deceased Seema were in the varanda. Both the witnesses heard the cry of the deceased Seema and when they went to

help her they found that the doors were bolted from inside. As we have pointed out earlier that the F.I.R. is not the encyclopedia in which all the details should be mentioned. In the case in hand, the incident took place at about 10:00 a.m. and the report was lodged at 10:35 a.m. The distance between the police station and the place of occurrence had been shown in the F.I.R. as three kilometers. When the incident occurred, father of the deceased Seema was called by Rajendra Prasad from school. The informant Om Prakash Dua reached at the spot and thereafter he went to the police station. Thus there was prompt F.I.R. in the facts and circumstances of the case. The informant Om Prakash Dua PW5 had given natural version of the occurrence. It is also pertinent to mention here that I.O. has also recorded the statement of Rashmi Dua PW1 and Poonam PW2 on the same day after few hours of the incident. Thus the prompt F.I.R. and the statements recorded u/s 161 of Cr.P.C. of the eyewitnesses immediately after the incident also inspires confidence that it was not the outcome of due consultation or deliberation. Rashmi Dua PW1 and Poonam PW2 had corroborated the prosecution story. Thus, we do not find any force in the contention raised by the learned Amicus Curiae.

14. Learned Amicus Curiae further contended that there are certain contradictions in the testimony of the witnesses, i.e., Rashmi Dua PW1, Poonam PW2 and Om Prakash Dua PW5 recorded u/s 161 of the Cr.P.C. by the Investigation Officer and the evidence of the witnesses before the trial court. Learned G.A. refuted the contention and contended that minor discrepancies are bound to creep in the testimony of truthful, natural and reliable witnesses when they speak

about the detail. We have gone through the entire evidence and the contradictions pointed out by the learned counsel for the appellants. Unless the contradictions are of a material dimensions, the same should not be used to jettison the evidence in its entirety. It is quite natural that the persons narrate the story in different ways and in different words at different times. The minor discrepancies are bound to creep in the testimony of natural and reliable witnesses. The minor discrepancies in evidence are those which are due to normal errors of observations, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. The discrepancies which have been pointed out by the learned counsel for the accused-appellants in the evidence are on account of normal errors of memory due to mental disposition due to the death of their nearest relative. By and large the people cannot accurately recall the sequence of the events which took place in short span and reproduce the sequence of the events before the Investigation Officer or the Court. They can only recall the main purport of the incident. It is unrealistic to expect a witness to be a human tape-recorder or video camera. The witnesses cannot be expected to possess a photographic memory and to recall the details of an incident. The witnesses are overtaken by the incident because they could have not anticipated the occurrence which shows up as an element of surprise. In the instant case, the witnesses have narrated the main purport of the incident. The prosecution witnesses cannot be expected to recall accurately the sequence of the events which took place in a rapid succession or short span of time. A witness is likely to get confused or mixed up when interrogated later on. It cannot be expected from the witness

to narrate the incident with mathematical niceties in criminal cases. The contradictions as pointed out by the learned Amicus Curiae are of minor nature and these contradictions and inconsistency do not render the evidence of the prosecution witnesses including eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. We have gone through the evidence and found that whatever was stated in the evidence was by way clarification and certainty cannot be termed up an improvement. The evidence of both the witnesses is quiet natural and they have proved the prosecution case beyond any reasonable doubt.

15. Learned Amicus Curiae further contended that even though assuming that the evidence of the prosecution was found credible and cogent, the accused/appellant is entitled to get the benefit of doubt as there was no motive to cause injuries on the person of the deceased. Learned G.A. refuted the contention. When the eyewitnesses of the occurrence consistently supported the prosecution case, the question of motive would have lost its importance. It is well settled that in order to bring home the guilt of an accused, it is not necessary for the prosecution to prove the motive. The existence of motive is only one of the circumstances to be kept in mind while appreciating the evidence adduced by the prosecution. If the evidence of the witnesses appears to be truthful and convincing, failure to prove the motive is not fatal to the case of the prosecution. It is also well settled that establishment of motive is not sine qua non for proving the prosecution case. It was held in **Yunus Vs. State of M.P. SCC 2003 (1) p/429:-**

“The prosecution in the present case has failed to prove the motive. Failure to prove motive for crime in our view is of no consequence. The role of the accused persons in the crime stands clearly established. The ocular evidence is very clear and convincing in this case. The illegal acts of the accused persons have resulted in the death of a young boy of 18 years. It is also well settled law that establishment of motive is not sine quo non for proving the prosecution case.”

The Hon'ble Apex Court has affirmed the above view in **Bhimapa Chandappa Hosamani Vs. State of Karnataka 2007 (1) SCC(Cri) 456**). Therefore, we do not find any force in the contention raised by the Amicus Curiae for the appellant.

16. Learned Amicus Curiae further contended that Rajendra, Prasad, cousin of the deceased Seema reached at the spot when Rashmi Dua PW1 and Poonam PW2 were trying to open the door which had been bolted from inside by the accused/appellant. It was further contended that he saw that the door has been bolted from inside and he did not try to intervene and open the door so that the deceased Km. Seema could be saved. It was further contended that the behavior of Rajendra Prasad was unusual which lead to take an inference that the entire prosecution story is unreliable. Learned G.A. refuted the contention. Human behavior varied from person to person. Different people behave and react differently in different situations. Human behavior depends upon the facts and circumstances of each case. How a person would react and behave in a particular situation can never be predicated. Every person who witnesses a serious crime reacts in his own way. Rajendra would have thought it better in the facts and circumstances

that the father of the deceased should be informed immediately and he did it. only on the ground that Rajendra did not try to rescue the deceased, it cannot be concluded that he was not present at the spot. In the case of **Ashok Kumar Pandey Vs. State of Delhi 2002 (4) SC 76**, the father of the deceased was eye-witness of the incident and he was unarmed. The father of the deceased heard cries of his daughter whereupon he immediately rush towards the place of occurrence and found that the accused was inflicting stab wounds on his daughter with a knife while she was bleeding profusely. The accused came towards him in a state of anger with knife in his hand and the eye-witness retracted his steps. At this stage, the accused ran away from the place of occurrence. It was pointed out that the father of the deceased saw the accused inflicting injuries in his daughter and he did not take steps to rescue her. It was submitted that the conduct of the eye-witness was unnatural, which shows that he was not present at the place of occurrence. In these circumstances of the case, it was held by the Hon'ble Apex that that it cannot be said to be unnatural conduct if he could not take step to save the life of his daughter. In the case of **Balbir Singh & others Vs. State of Punjab & others 2005 (9) SCC 299**, the eye-witness (son of the deceased) and the deceased were coming back from the field. The accused persons emerged near the field and inflicted fatal injury on the person of the deceased with deadly weapons. The deceased died at the spot. It was pointed out that since the son of the deceased did not intervene in the fight, hence his presence was doubtful. The Hon'ble Apex Court has held that the evidence of son of the deceased cannot be disbelieved for not having intervened in the melee.

In view of the above, we do not find any force in the contention of the learned Amicus Curiae.

17. The learned Amicus Curiae further contended that the accused/appellant and the deceased Seema were inside the room and the deceased Seema was crying for the help. Rashmi Dua PW1 and Poonam PW2 were thumping the doors to open so that they could save the life of the deceased Seema but they found that the doors bolted from inside the room. It was further contended that the prosecution has led the evidence that meanwhile Rajendra Prasad, cousin of Rashmi Dua PW1 and Poonam PW2 came over there to give the '*Prasad*' of goddess Vashno Devi. When he saw that both the sisters were trying to open the doors and saying that the accused/appellant should not kill their sister deceased Seema. He immediately went to the college to call the father of the deceased. It was further contended that the prosecution should have adduced the evidence of Rajendra Prasad who could have narrated the entire incident. The learned G.A. refuted the contention. It is not disputed that Rajendra Prasad is also closely related to the deceased Seema. It is not always necessary to multiply the evidence of the incident on the same point. The prosecution has adduced the evidence of Rashmi Dua PW1 and Poonam PW2 in support of its case. The Court has to see the quality of the evidence produced by the prosecution and not quantity of the evidence. If the prosecution evidence available on record is otherwise credible and cogent, the increase in the number of the witnesses cannot be said to be the requirement of the case. If the prosecution establishes the guilt of appellant beyond reasonable doubt by the credible and cogent evidence, there is no need to produce the other witnesses

who are said to be present at the time of the incident. The witnesses if they have seen the occurrence their evidence cannot be thrown out-rightly on the ground that the other witnesses have not been produced. We, therefore, do not find any force in the submission of the learned Amicus Curiae.

18. Nathi Lal Sharma PW7, the Investigating Officer of the case had deposed before the trial court that after that receiving the information by the informant Om Prakash Dua PW5, he reached at the spot and found that the accused/appellant locked himself in the room. He anyway got success to open the bolt of the door of the room from the accused/appellant. The accused/appellant came outside the room alongwith knife. The accused/appellant was apprehended at the spot alongwith knife. He prepared the recovery memo of knife Ex.ka.-8. He prepared the inquest report Ex.ka.-7 at the spot and sent the body to the post mortem. It is evident from the evidence of the Investigating Officer that the accused/appellant was found inside the room and he had bolted it from inside. The accused/appellant came out after opening the door with knife in his hand. Thus, this fact also proves that the accused/appellant had knife and the deceased had sustained the fatal blows of knife on her body. The prosecution also established that Rashmi Dua PW1 and Poonam PW2 were outside room in the varanda. It is also established that the accused/appellant was sitting in the chair in the room insider where the deceased Seema was lying on the bed. When both the witnesses Rashmi Dua PW1 and Poonam PW2 heard the cry of their sister Seema for the help, they rushed towards the door and found it bolted from inside. The accused/appellant was also inside the room and he was saying that he would also die after killing the deceased Km.

Seema. He did not open the door. It is also established by the evidence that both the sister, i.e. Rashmi Dua PW1 and Poonam PW2 were crying from outside the room not to kill their sister and they were requesting to open the door but he did not accede the request. Meanwhile, the other people came at the spot they tried to open the door. Incidentally the bolt inside the room was broken and the door got opened. When the accused/appellant found that the door has been opened, he entered into another room adjacent to the said room and bolted it from inside. Thereafter, the witnesses found that the deceased Seema was lying on the ground and she had died due to the injuries sustained by her. Thereafter, the police came after the lodging the report by the informant Om Prakash Dua PW5 and the room was opened and the accused/appellant was apprehended with knife. Thus, this fact further establishes that the accused/appellant had caused the fatal blows on the person of the deceased Seema and she died due to these blows at the spot.

19. After considering the entire evidence in *toto*, the trial court found the evidence to be implicity truthful and reliable. Though the presence of the witnesses, i.e., Rashmi Dua PW1 and Poonam PW2 was attempted to be shown as doubtful. We do not find any reason to accept the plea. Their presence at the place of incident was explained and their evidence cannot be thrown out as unreliable and tainted merely they are related with the deceased. This fact of the relation would not warrant mechanical rejection of the testimony. (See **State of Punjab Vs. Karnail Singh** reported in **2004 SCC (Cri) p/135**). The manner of the assault as described by the prosecution is further corroborated by the medical

evidence. We have already indicated in para 9 the injuries on the person of the deceased. The doctor has opined that the deceased died due to the shock and hemorrhage as a result of ante mortem injuries.

20. The statement of the accused/appellant was recorded u/s 313 Cr/P.C. He had stated in his statement that on the date, time and place of the occurrence, the accused/appellant and the deceased Seema were alone in the house. The deceased Seema said to him that his father was planning to marry her with a boy to whom the deceased Km. Seema did not like to marry. The deceased Km. Seema also told the accused/appellant that her father was not agreeable to marry her with the boy of her choice. On this protest, the deceased Km. Seema was very angry and furious. The deceased Km. Seema wanted to commit the suicide and she started inflicting the injuries on her person by knife. The accused/appellant wanted to snatch the knife from her so to prevent her from inflicting the knife injuries on her body. While doing so, the deceased inflicted knife injuries on the person of the accused/appellant due to which he also sustained the injuries. Thus the deceased Seema committed suicide by killing herself by inflicting knife injuries. The appellant has further stated in his statement recorded u/s 313 Cr.P.C. that the deceased Seema was his real niece so there was no question of marrying her.

21. Now we have to examine as to whether the version given by the accused/appellant in his statement recorded u/s 313 Cr.P.C. is probable; reliable or not. The learned trial court has rightly held that the post mortem report of the deceased reveals that the deceased sustained the incised

wound of different parts of her body which cannot be self inflicted injuries. The incised injuries on the left side of the neck, left shoulder, hands, thumb and little finger clearly show that such injuries cannot be self-inflicted. Such injuries can only be inflicted if the other person would have been stabbing the deceased and the deceased would have been trying to save herself. The learned trial court has rightly held that these injuries found on the body of the deceased cannot be self-inflicted. The learned trial court further held that the deceased was frail girl of tender age and she was armed with knife as pointed out by the accused/appellant. The appellant was a young and stout man and he could have very well hold the hands of the girl and to save her in that process the appellant at the most could have sustained the injuries on his hand. Perusal of the injury report of the accused/appellant reveals that he had not sustained any injuries on his hand.

22. It is also pertinent to mention here that the accused/appellant had not sustained any injury on his hands, palm and finger while the deceased Seema sustained the injuries on her thumb, palm, fingers and hands. The injuries on the persons of the accused/appellant and the deceased Seema reveal that these injuries have been inflicted by accused/appellant on the deceased as established by the prosecution while she was trying to save herself from the knife blows. Thus, the defence version given by the appellant u/s 313 Cr.P.C. is not probable and reliable. It is merely an afterthought. We are completely in agreement with the findings recorded by the learned trial court. We do not find any fault in the approach of the learned trial court in discarding the defence version. It is also pertinent to mention here that the accused/appellant himself had

admitted that the deceased Seema and the accused/appellant were inside the room. It is also admitted that deceased Seema had sustained the injuries on her body while committing the suicide. It is further admitted that the deceased sustained the knife injuries on her person due to which she died. The prosecution has led the evidence that the accused/appellant inflicted the knife blows on the person of the deceased and killed her. According to the defence version, the deceased Km. Seema tried to commit the suicide and she started inflicting injuries on her person. The accused/appellant tried to save her from inflicting the knife injuries. The accused/appellant also sustained the injuries on his person while preventing the deceased from inflicting injuries on herself. As we have pointed out that the defence version is not probable and the accused/appellant had not been able to explain the above fact of the injuries on the person of the deceased particularly when he was only present inside the room. Such incriminating links of fact could, if at all, have been only explained by the appellant, and by nobody else, they being personally and exclusively within his knowledge. Of late, Courts have, from the falsity of the defence plea and false answers given to Court, when questioned, found the missing links to be supplied by such answers for completing the chain of incriminating circumstances necessary to connect the person concerned with the crime committed [**See Joseph Vs. State of Kerala, 2000 SCC (Cri)**].

23. The prosecution in support of its case examined eyewitnesses Rashmi Dua PW1 and Poonam PW2 apart from other witnesses. The prosecution has also adduced the evidence of Investigating Officer that the accused/appellant

was inside the room having knife from his hand and the accused/appellant after assurance of the Investigating Officer opened the bolt of the room and thereafter came out. The Investigating Officer recovered the knife from his hand and found that the accused/appellant had already sustained the injuries. The prosecution has also explained the injuries on the person of the accused/appellant by adducing the evidence that after causing the injuries on the person of the deceased Seema, Rashmi Dua PW1 and Poonam PW2 alongwith other person tried to open the door of the room from inside where the deceased Seema was murdered. The bolt of the door had been broken & the door got opened and it was found that the deceased Seema had died due to the knife injuries. When the accused/appellant was that the door has been opened, he entered into another room and bolted it from inside where he tried to commit the suicide and inflicted the injuries on his person. The accused has sustained the following injuries on his person :-

1. *Incised wound 2 cm. X 0.5 cm. x depth not probed on rt. Abdomen about 2 cm. below right costal margin.*

2. *Incised wound 3 cm. x 0.5 cm. x depth not probed on right side abdomen 10 cm. below injury no. 1.*

3. *Incised wound 1-1/2 cm. x 0.5 cm. x depth not probed on rt. side abdomen 9 cm. away from injury no. 2.*

4. *Incised wound 2.5 cm. X 0.5 cm. x depth not probed on left side abdomen 2 cm. above umbilicus.*

5. *Incised wound 2 cm. x 0.5 cm. x depth not probed on left abdomen 2 cm. above injury no. 4.*

6. *Incised wound 1.5 cm. x 0.5 cm. x depth not probed on left abdomen 2 cm. above injury no. 4.*

7. *Incised wound 1.5 cm. x skin deep on front of left oven 3 cm. above elbow joint.*

Perusal of the injuries clearly reveals that these injuries could be self-inflicted. The prosecution evidence is further corroborated by the medical evidence, as such, it is established that after causing the injuries on the person of the deceased Seema and having come to know that the deceased Seema had died, the accused/appellant also tried to inflict the injuries on his person commit suicide. This fact is further corroborated by the evidence of the Investigating Officer who recovered the knife from his hand at the spot. The prosecution witnesses have supported the occurrence and further established that the accused/appellant tried to commit the suicide they have consistently corroborated the prosecution case in all material particulars. We do not find any infirmity in the evidence. The witnesses have been cross examined at length but nothing could be elicited in their cross examination to discredit their testimony.

24. On a conspectus of various relevant features of the case including the genesis; the nature of the incident; the nature of the weapon carried by the accused at the scene of the occurrence, it cannot be concluded from the prosecution evidence or from any probability arising from the record that the accused had been falsely implicated in the case. After going through the same, we do not find any reason to disbelieve the version of the prosecution witnesses. We are completely in agreement with the findings recorded by the

trial court and we find that the prosecution has been able to establish the case beyond reasonable doubt.

25. It is also in the prosecution evidence that immediately after the arrest of the accused, the Investigating Officer recorded the statement at the spot and he sent the accused/appellant to the hospital for medical examination where his dying declaration was recorded by the Tehsildar on 23.08.1986. He had made the confessional statement before the Tehsildar. So far as the confessional statement dated 23.08.1986 made by the accused/appellant to the Tehsildar is concerned, it is a piece of evidence which needs to be eschewed from consideration on the ground of inadmissibility. It has not been recorded under the procedure prescribed u/s 164 Cr.P.C. According to the learned Amicus Curiae, non-compliance of Section 164 Cr.P.C. by the recording Magistrate cannot be cured by Section 463 Cr.P.C. as it cures only the defect of recording the statement and not its compliance. In support of his submission reliance has been placed by the learned Amicus Curiae upon the decisions of **Nazir Ahmad Vs. King Emperor, AIR 1936 PC 253 (2); Preetam Vs. State of M.P., 1996 SCC (Cri) p/1343 and Tulsi Singh Vs. State of Punjab, 1996 SCC (Cri) 1118**. It was further submitted that since it cannot be disputed that the accused/appellant was removed from the place of occurrence to the hospital by the police after the arrest and he came in the hospital under police custody. Since that time when his confessional statement was recorded by the Tehsildar in the hospital, the accused/appellant was in police custody and it cannot be treated as an extra judicial confessional having been made while in police custody. Learned Amicus Curiae also relied upon the judgment of the Apex Court in the case of

Ram Singh Vs. Sonia and others (2007) 3 SCC 1 in which the Hon'ble Apex Court has held at para 57 as under:-

*“57. Indisputably, A-2 was arrested on 19-9-2001 and on 24th and 25th September when he was taken for LDT he was in police custody and it was at the point of time he made extra-judicial confession to PW17 at which point of time police personnel went away from the scene temporarily. Therefore, in the light of the decision rendered in **Kishor Chand 1991 SCC (Cri) 172** we are of the opinion that extra judicial confession made by A-2 to PW17 is hit by Section 26 of the Evidence Act, it having been made by A-2 while in police custody and, consequently, cannot be admitted into evidence and, therefore, has to be eschewed from consideration. However, even in exclusion of extra-judicial confession made by A-2 before PW17 would be of no help to this accused as we are of the view that the prosecution has succeeded in proving its case beyond reasonable doubts against A-2 on the basis of circumstantial evidence enumerated above as well as extra-judicial confession made by A-2 before PW48.”*

26. After due consideration of the submission of the learned Amicus Curiae, even if the confessional statement is not taken into consideration in view of the fact that the requisite certificate as provided u/s 164 and 281 of Cr.P.C. has not been appended alongwith the statement. Further it cannot be treated as extra judicial confession as it was recorded when the accused/appellant was in the police custody. However, even the exclusion of the confessional statement or extra-judicial confession made by the accused/appellant would be of no help to the accused/appellant as we are of the

opinion that the prosecution has succeeded in proving its case on the basis of ocular evidence enumerated above.

27. In view of the aforesaid reasons, we hold that the prosecution has established the guilt beyond reasonable doubt against the accused-appellant. We find that the learned trial court has rightly convicted and sentenced the accused-appellant and there is no infirmity in the impugned judgment and order passed by the learned trial court in Sessions Trial No. 486 1986. The accused-appellant Ashok Kumar is liable to be convicted and sentence u/s 302/309. Hence, the appeal is liable to be dismissed and is hereby dismissed.

28. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within three months from the date of receipt of order.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 24th July, 2007

Shiv